

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1158 of 1985
with
CIVIL APPLICATION NO.12185 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BAI KESAR

Versus

BAI JIVI

Appearance:

MR VM TRIVEDI for Petitioners
NOTICE SERVED for Respondent No. 1
MS VASUBEN P SHAH for Respondent No. 2, 4, 5, 6
MS ROOPAL R PATEL for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/04/2000

C.A.V.JUDGEMENT

1. Bai Kesar and minor Prabha-petitioners(Original defendants) have filed the present revision application before this court under Section 29 of the Bombay Rent Act (hereinafter referred to as "the Rent Act") against the judgment and decree dated 30.11.1984 passed by the District Judge, Surat in Regular Civil Appeal No.29/82 wherein the Ld.District Judge was pleased to dismiss the

appeal. The learned Judge was pleased to confirm the judgment and decree dated 31.8.1981 passed by the Additional Judge, Small Causes Court, Surat in Small Rent Suit No.1096/75 filed by Bai Jivi and others-original plaintiffs. The decree for possession granted by the trial court was confirmed.

2. The facts giving rise to this application are as under:

(i) There is a property situated in Machhiwad Ward No.1 Nodh No.2383. Bai Jivi, widow of Ramji Dhodiya-plaintiff No.1 and Dhiraj Ramji Saphiwala-plaintiff No.2 were the owner of the suit property. The plaintiffs filed the above rent suit being Small Rent Suit No.1096/75 before the Additional Judge, Small Causes Court, Surat to recover the possession of the suit premises from the defendant No.1 on the ground of non payment of rent and to recover arrears of rent of Rs.1,210/-for a period of three years prior to the date of filing of the suit. In the said suit it was alleged that the defendant did not pay the rent regularly and the rent was in arrears from 1.1.1962. The plaintiff had served demand notice to the defendant 19.1.1972. However, the defendant neglected to pay arrears of rent after service of demand notice. It was alleged that the defendant was liable to vacate the suit premises on the ground of nonpayment of rent and therefore they have filed the suit to recover the possession of the suit premises and for payment of arrears of rent.

(ii) The defendants appeared and resisted the suit by filing written statement-Exh.19. The defendants contended that they reside in the suit premises from the husband of the plaintiff No.1 for the last 25 years at a monthly rent of Rs.5/- and it was increased to Rs.10/-, and then to Rs.15 p.m. The defendant contended that the rent of Rs.20/-p.m. is also raised and the same is not standard a rent and it was also denied that the rent was due from 1.1.1962. It was further contended that the predecessor-in-title of the defendant, the mother's sister of the defendant No.1 was residing with her and she was maintaining her. It was contended that the rent was paid upto December, 1971 and since the suit premises was in dilapidated condition and the predecessor-in-title of the opponent had no money to repair, the petitioner had spent Rs.7,000/- to Rs.8,000/- on repairs and the said amount is still to be recovered from the rent due.

(iii) After considering the evidence on record, the learned Additional Judge, Small Causes Court by by his

judgment and order/decreed, dated 31.8.1991 was pleased to hold that the defendant No.1 was in arrears from 1.1.1962 and the standard rent was Rs.30/-p.m. The learned judge also held that the petitioners-defendants could not prove that they incurred expenses for repairs and they are not entitled to any set off. The learned judge further held that even though the provisions of Section 12(3)(b) were to be applicable the respondents-plaintiffs are entitled to possession on the ground of nonpayment of the rent. The learned judge held that the suit notice was held to be legal and valid. The learned judge decreed the suit against the defendants and directed the defendants to handover vacant possession of the suit premises to plaintiff on or before 30.11.1981. The learned judge decreed the suit for arrears of rent for Rs.1080/- and directed the defendants to pay Rs.1080/-to plaintiffs and the learned judge dismissed the remaining claim of arrears of rent being time barred by limitation.

(iv) Being aggrieved and dissatisfied with the aforesaid judgment and decree of the learned Additional Judge Regular Civil Appeal No.29/82 in the court of District Judge, Surat. The learned District Judge, Surat by judgment and decree dated 30.11.1984 after considering the evidence on record held that the contractual rent was Rs.30/-per month and the learned appellate judge confirmed the finding of the learned trial judge and confirmed the decree for the rent of Rs.1080/-for the period of three years prior to the date of the suit and further held that if the original defendants-appellants want to avail of the benefit of the later part of clause (b) tender or pay the rent every month or as it falls due or at his discretion in advance during the pendency of appeal. The learned appellate judge ultimately held that as the appellants have not deposited the rent regularly, they have not complied with the provisions of section 12(3)(b) of the Rent Act the decree for possession by the learned trial judge should be confirmed and the appeal should be dismissed.

3. Being aggrieved and dissatisfied with the aforesaid judgment of the learned appellate judge the original defendants-petitioners herein filed the present revision application before this court. At the time of hearing of this application the learned counsel for the petitioners-defendants raised several contentions. He contended that the learned judge has erred in holding that the standard rent of the suit premises is Rs.30/-p.m. It was contended that the learned judge has erred in holding that the rent was due from 1.1.1962.

4. Ms.Patel, learned counsel for respondents has tried to support the finding of the learned appellate judge.

5. I have gone through the judgment of the appellate court and I do not see any reason to interfere with the order passed by the appellate court as the learned appellate judge has considered the trial court judgment, evidence on record and the said reasoning of the appellate based on the findings of fact and the learned appellate judge has appreciated the facts and circumstances of the case and in view of the decision of this court in VAJUBHAI VASHRAM vs PARIKH MOHANLAL RANCHHODDAS reported in 19 GLR 1007 wherein the court speaking through Honourable Mr.Justice A.M.Ahmadi(as His Lordship then was) in para 6 of the judgment after considering the judgment of the Honourable Supreme Court in the case of Ganpat Ladha vs Sashikant Vishnu Shinde reported in 19 GLR 502 observed that "once it is found that the tenant has failed to comply with the requirements of section 12(3)(b) of the Act, the court has no discretion but to pass a decree in ejectment against the tenant". Ms.Patel has also relied on the judgment of the Supreme Court in the case of MRANALINI B.SHAH & ANR vs BAPALAL MOHANLAL SHAH eported in 19 GLR 1090 wherein in para 13 of the judgment the court observed as under:

"The above enunciation, clarifies beyond doubt that the provisions of clause (b) of section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The word "regularly" in clause (b) of section 12(3) has a significance of its own. It enjoins a payment of tender characterised by reasonable punctuality, that is to say, one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clock like precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of clause (b) tender or pay it every month as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at regular

intervals of 2 or 3 or 4 months as is the case before us the court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of this clause irrespective of the fact that by the time the judgment was pronounced all the arrears had been cleared by the tenant".

7. I have considered the facts and result of proceedings trial court as well as the appellate court and also perused the judgment of this court in the case of Vajubhai Vashram (supra) as well as the judgment of the Supreme Court in the case of Ganpat ladha (supra). Shri V.M.Trivedi, the learned counsel for the petitioner could not make any submission assailing the judgment of the trial court as well as the appellate court. The citations cited by the learned counsel for the respondents are binding on me and the learned counsel for the respondents has also relied upon the subsequent judgment in the case of RASIKLAL NARMADASHANKER TRIVEDI vs DILIPKUMAR VASANTBHAI KOTAK reported in 21 GLR 741 wherein this court (Coram: S.H.Sheth,J) after relying on the judgment of the Supreme Court in the case of Ganpat Ladha in para 6 observed as under:

"Now I am not able to find any provision of law which states that even though the tenant is not entitled to the statutory protection of any provision under the Bombay Rent Act, he shall not be evicted merely because he contends that it is difficult for him to qualify for the protection available to him under the provisions of the Bombay Rent Act. "

8. The aforesaid judgment of this court also supports the case of the respondent and I see no reason to interfere with the judgment and decree of the trial court as well as appellate court and in view of the ratio laid down in the cases of Vajubhai Vashram, Ganpat ladha and Rasiklal (all supra) and hence I am of the view that the revision application requires to be dismissed.

9. Though the Civil Application No.12185/99 has been filed raising certain additional grounds, even the tenant has not filed any reply controverting the same, and therefore, however, I do not decide the contentions raised in the Civil Application in view of the fact that I have already decided the civil revision application against the applicant and in favour of respondent.

10. The Civil Application No.12185/99 is filed by Bai Jivi-original plaintiff No.1, Mulchand Ramji-original Plaintiff No.3, Laxmiben Madhubhai-original Plaintiff No.4, Mani Ranchhod-original Plaintiff No.5 and Chandiben Dayaram-original Plaintiff No.6 who are respondents in main revision application against Bai Kesar-original Defendant No.1, minor Prabha Naran-original defendant No.2-petitioner herein and also against Dhiraj Ramji Sappiwala-original plaintiff No.2 who died during the pendency of the proceedings. In the said application, Dhansukhbhai Dutiwala, Power of Attorneyholder of applicant No.1 stated on oath that in the aforesaid matter which arises out of Regular Civil Appeal No.29/82 the appellate court held in favour of applicants in respect of arrears of rent and it gave considerable time to the opponent Nos 1 & 2 to pay up the arrears of rent but the opponent Nos 1 & 2 failed to pay the entire amount of rent and hence the appellate court by its judgment and decree dated 30.11.1984 dismissed the said appeal. It was further stated that on oath on 19.8.99 the opponent Nos.1 and 2 who are petitioners in the revision application were in arrears of rent after filing the same and even till that date they have not paid single paise towards arrears of rent as well as rent due thereafter. Copy of the statement of the trial court showing the last deposit made by the opponent Nos 1 & 2 towards the rent on 29.9.1984, i.e. before filing of the revision application has been produced along with the civil application. It was stated that while admitting the aforesaid civil revision application the Honourable court by order dated 23.9.85 granted stay against the judgment and decree dated 30.11.1984 on usual terms, i.e. the opponent Nos 1 & 2 were required to pay up the arrears of rent and were required to pay the rent regularly during the pendency of the aforesaid revision application. It has been further stated that the opponent Nos 1 & 2 apparently have not deposited the single paise till date and thereby they have not complied with the terms of the stay granted by this court on 23.9.1985.

11. It was further stated that the stay granted earlier should be vacated also on the ground that the suit premises is not being used by opponent Nos 1 & 2 since number of years and it has remained vacant since 1991. It was stated that opponent No.1-Bai Kesar had expired on 27.2.1991. The opponent No.2-Prabha Naran had also got married before filing of the present revision application and she had gone to reside with her husband and it is not known where she is residing.

12. It was further stated that Bai Jivi-original plaintiff No.1 who was mother of original plaintiff Nos 2 to 5 i.e. applicant Nos 2 to 5 had expired on 23.5.1983. The opponent No.3-Dhraj Ramji Sappiwala also expired on 17.4.1991. It was further stated that the applicant Nos 3 to 5 are the daughters of the original plaintiff No.1 and they have executed a release deed dated 7.5.1991 relinquishing their rights in the suit premises. Therefore, the applicants had also filed application for deleting the name of original plaintiff No.1 and also for deleting the names of applicant Nos 3 to 5 from the cause title. It was stated that the opponent No.3 who is heir and legal representative of original plaintiff No.1 also expired on 17.4.1991. Though I have not decided the civil application on merits, however, it has been stated that Bai Jini, applicant No.1 has expired on 23.5.1983 and the death certificate thereof is also produced, hence, her name may be deleted from the record of the case. As regards applicant No.3-Laxmiben Madhubhai, applicant No.4-Mani Ranchhod and applicant No.5-Chandiben Dayaram it is submitted that their names may also be deleted in view of release deed, dated 7.5.91 wherein they have stated that they have released their rights in connection with the property in question. The said release deed dated 7.5.91 is also taken on record of the case. Except that the Civil Application is not decided on merits.

13. In view of the above, the applicants prayed that the stay granted by this court on 23.9.85 may be vacated. It may be stated that the civil application was filed in August, 1999 and no reply till date has been filed by the opponents.

14 In view of the reasons which have been stated in the civil application I also satisfied that the original defendant-petitioner herein has no case and the stay granted earlier on 23.9.85 requires to be vacated. However, since I have already heard the main revision application and dismissed the same there is no question of continuing the stay granted earlier. So on both the grounds, i.e. since the main revision application is dismissed and both the judgment and decree passed by the District Judge in Regular Civil Appeal No.29/82, dated 30.11.1984 and also the judgment and decree passed by the Ld.Additional Judge, Small Causes Court, Surat in Rent Suit No.1096/75 are confirmed, and in view of the grounds stated in the civil application the stay granted earlier dated 23.9.85 is vacated. No order as to costs.

(K.M.MEHTA,J)